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OFFICE OF THE
ATTORNEY GENERAL

Movant: Idaho Power Company

Department of Water Resources
Adjudication Bureau

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96-09-0039

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Consolidated Subcases No. 75-13316
	)	
Case No. 39576	)	NOTICE OF FILING OF INITIAL
	)	DISCLOSURE AND GENERAL OBJECTION
	)	TO THE SCOPE OF DISCLOSURES
_____	)	

DESCRIPTIVE SUMMARY

This is a notice of filing by Idaho Power Company of its initial disclosures made in accordance with the *Third Amended Case Management Order* dated July 17, 1996, and the *Stipulation and Motion Governing Discovery Concerning United States' Claims Filed on Behalf of the U.S.D.A. Forest Service*, filed March 25, 1996, together with a general objection to the scope of the disclosures.

OBJECTION AND NOTICE

In compliance with the *Third Amended Case Management Order* dated July 17, 1996 (*Order*), and the *Stipulation and Motion Governing Discovery Concerning United States' Claims Filed on Behalf of the U.S.D.A. Forest Service*, (*FS Stipulation*) filed March 25, 1996, the Idaho Power Company (the "Company") files this *Notice of Disclosure*. As a preliminary matter, the Company objects to the scope of the disclosures because of inherent ambiguities in the terms used in the *FS Stipulation* and the permitted scope of discovery under the Idaho Rules of Civil Procedure (*IRCP*).

General Objection - On March 22, 1996, the United States and the State of Idaho entered into the *FS Stipulation* stipulating to the ...*initial disclosures of documents and data related to the United States*

1 instream flow claims filed on behalf of the United States Department of Agriculture, Forest Service,
2 and requesting that the Court adopt the procedures suggested in the *FS Stipulation concerning initial*
3 *disclosures of information concerning these claims. FS Stipulation*, pg. 1. Section IV of the *FS*
4 *Stipulation*, entitled *Initial Disclosure by Other Objectors*, provided:

5 *The United States and the State request the Court to include in its discovery order a*
6 *provision requiring the same initial disclosures from the other objectors as provided*
for above with respect to the State, i.e., requiring that other objectors:

7 *A. Shall make available for review and copying all information in*
8 *their possession, or in the possession of their experts and/or*
9 *consultants, relating to the categories set forth in to (sic) Section II*
above by June 30, 1996 or concurrent with production by the United
States.

10 *FS Stipulation*, ppg. 7-8,. The subsequent *Order* entered by the Court provided in pertinent part:

11 *All pretrial litigation activities (including discovery and motion) shall be*
12 *governed by this case management order, the terms of the (FS Stipulation) and the*
terms of the (FWS Stipulation) ...

13 *The United States, the State of Idaho, and all parties to each subcase shall*
14 *make the initial disclosures identified in the "FS Stipulation" and "FWS Stipulation:*
as follows: ...

15 *Order*, ppg 3-4.

16 The general scope of discovery in civil litigation is governed by *IRCP 26(b)(1)*. That rule clearly
17 contemplates that while the court may limit the scope of discovery, it may not expand it beyond the
18 parameters contemplated by the *IRCP*. The Court's reference and apparent incorporation of the terms
19 of the *FS Stipulation* in the *Order* raises the inference that the scope of the contemplated disclosures
20 are to be governed by the terms of the *FS Stipulation* and not the *IRCP*. To the extent that the
21 former limits the permitted scope of discovery under the *IRCP*, the Company has no objection.
22 However, if it was intended by the parties to the *FS Stipulation*, the U.S. and the State, that the
23 scope of the disclosures would be broader than that allowed under the general discovery provisions of
24 the *IRCP*, the Company objects to any such attempt to expand the scope beyond that allowed by *IRCP*
25 *26(b)(1)*.

26 Without waiving that objection, and contemplating that the intended scope of the disclosures
27 is consistent with *IRCP 26(b)(1)*, the Company makes the following disclosures in accordance with the
28 *Order*.

1 Initial Disclosures - To the date of this disclosure, the Company has (i) not reviewed or identified any
2 material or information in its possession that may be relevant to the claims filed by the United States
3 in these subcases, (ii) developed, prepared or collected any data or information to support its
4 objections, nor (iii) retained any experts which it intends to rely upon at trial with regard to these
5 subcases. The Company is continuing to review the Claims filed in these subcases and, consistent with
6 its response to ¶ 1 in its *Objection*, determine the impact of the Claims on the Company's facilities and
7 related water rights. At such time as that review is completed and any relevant material or information
8 in the possession of the Company identified, the Company will supplement this disclosure as
9 contemplated by the *IRCP*.

10 DATED this 3rd day of September, 1996.

11 ROSHOLT, ROBERTSON & TUCKER

12 
13 JAMES C. TUCKER

14 CERTIFICATE OF MAILING

15 I hereby certify that on this 3rd day of September, 1996, I served a copy of the
16 foregoing NOTICE OF FILING BY IDAHO POWER COMPANY OF INITIAL DISCLOSURE, by
17 depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

18 United States Department of Justice
19 Environment & Natural Resources Division
20 550 West Fort Street, MSC 033
21 Boise, Idaho 83724

22 ALAN G. LANCE
23 Attorney General
24 Clive Strong
25 Deputy Attorney General
26 Chief, Natural Resources Division
27 State of Idaho
28 P.O. Box 44449
Boise, Idaho 83711-4449


JAMES C. TUCKER